



THE MAINE CEO

A PERIODIC NEWSLETTER FOR
CODE ENFORCEMENT TRAINING & CERTIFICATION
PROGRAM INFORMATION

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THE 121ST LEGISLATIVE SESSION

It has been a busy session at the Legislature and it's far from over! Listed below are a few of the bills that may affect you as a Code Official. Also included is a summary of each bill and Legislative action taken to date.

- **LD 688 - An Act To Provide Incentives for Municipalities to Adopt a Building Rehabilitation Code.**

Bill Summary - This bill provides that a municipality that adopts the rehabilitation component of a nationally recognized building code must be given preference for economic development grants administered by the Department of Economic and Community Development.

Action: LD 688 was voted out of Committee to be carried over to the next session.

- **LD 1025 - An Act To Ensure Uniform Code Compliance and Efficient Oversight of Construction in the State.**

Bill Summary - This bill establishes the Office of Building codes within the Department of Professional and Financial Regulation to ensure the uniform code compliance and efficient oversight of construction of new residential and commercial buildings in the State. The office is responsible for providing testing and licensing standards for private building inspectors and establishing a fee schedule for building inspector services. This bill also requires owners and developers of residential and commercial buildings to certify to the Office of Building Codes that a newly constructed building meets all applicable building and energy codes. It also requires the department to submit a plan to the Joint Standing Committee on Business, Research and Economic Development prior to the Second Regular session of the 121st Legislature to merge into the Office of Building Codes functions within existing agencies that are responsible for plumbing, electrical, fire and energy code inspections.

Action: LD 1025 was voted out of Committee to be carried over to the next session.

- **LD 401 - An Act To Require the Plumbers' Examining Board To Adopt the Uniform Plumbing Code**

Bill Summary - This bill requires the Plumbers' Examining Board to adopt the Uniform Plumbing Code as the new plumbing code for the State.

Action: LD 401 was voted out of Committee to be carried over to the next session.

➤ **LD 529 - An Act to Clearly Define the State Fire Marshal's Powers**

Bill Summary - This bill requires the State Fire Marshal to adopt major substantive rules pertaining to all aspects of review of construction permits and requires the State Fire Marshal to adopt as rule the national building code of the Building Officials Code Administrators International, Inc., the international plumbing code of the International Code Council and the National Fire Code of the National Fire Protection Association. This bill requires the effective date of a rule adopted by the State Fire Marshal to be 90 days after public comment is closed and exempts from the rule any building permit filed before the effective date of the rule. This bill also exempts townhouses, apartment building and condominiums that are subject to a permit for new construction from the requirement of having 2 means of egress other than a window for each story above the first story.

➤ **Action:** LD 529 was voted out of Committee "ought not pass".

➤ **LD 695 - An Act To Modify the Minimum Lot Size Law (Amended)**

Bill Summary - This bill repeals the minimum lot size requirements for development using on-site subsurface wastewater disposal. It also fixes cross-references.

Action: LD 695 was voted out of Committee "ought to pass" as amended.

➤ **LD 1067 - An Act to Abolish the State Planning Office**

Bill Summary - This bill requires that a regional economic development organization must relocate every 5 years to a municipality that is physically located at least 30 miles from the current location in order to be eligible for state funding. It also abolishes the State Planning Office within the Executive Department.

Action: LD 1067 was voted out of Committee "ought not pass".

➤ **LD 308 - An Act To Streamline Maine's Planning Process**

Bill Summary - This bill dissolves the State Planning Office effective July 1, 2004 and requires the joint standing committee of the Legislature having jurisdiction over the state and local government matters to establish a legislative task force to reallocate State Planning Office functions to other appropriate state or local authorities for those functions not duplicated at the local level.

Action: LD 308 was voted out of Committee "ought not pass".

GONE BUT NOT FORGOTTEN

In early March Bruce Hensler left the Code Enforcement Officer Training and Certification Program, to take a position with the Southern Maine Technical College, Fire Fighter Training Program. We wish him the very best.

Unfortunately, due to budget cuts, the funding for this position was eliminated. To date the vacant position still remains, however, it can not be filled until the funding is reinstated.

QUESTIONS & ANSWERS...

Q: I wear many hats in my town - Code Enforcement Officer, Planning Board member, Health Officer, and Animal Control Officer. I've heard that holding several municipal positions may pose a conflict of interest. Can you tell me more about this?

A: Generally speaking, a CEO may not hold another office that is "incompatible" with the CEO position. Two offices are "incompatible" if the duties of each are so inconsistent or conflicting that one person holding both would not be able to perform the duties of each with undivided loyalty.

An example of incompatible positions would be if one person served as CEO and as a selectperson in a municipality where the selectpeople appoint and supervise the CEO. Another example is where one person serves as CEO and as a member of the local appeals board where decisions made by the CEO can be appealed to the appeals board. The positions of local plumbing inspector and local code enforcement officer also may be incompatible with the position of planning board member if the planning board generally must pass judgment on a decision of the LPI or CEO in the process of making its own decision regarding an application or a violation of the ordinance. It could be argued that, at least in the case of shoreland zoning, the Legislature did not want a single board member also to serve as CEO based on language in 38 MRSA § 441 authorizing the whole board to perform shoreland zoning enforcement. However, there is no case law directly on point and it is common practice of many small towns to have the CEO serve on the planning board. If challenged, a court will have to analyze the role of each in the affected town. In accepting and taking an oath for an office which is incompatible with one already held, the courts have ruled that the person automatically vacates the first office, as though he or she had actually resigned it. Be careful. If it feels like you may have a conflict with the positions, you probably will.

Enjoy the summer season and stay safe!